



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1994

Ms. Mercedes Leal
Senior Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR94-692

Dear Ms. Leal:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 29047.

Harris County (the "county"), through its sheriff's department, has received a request for information relating to a certain detective examination oral board. Specifically, the requestor seeks "[a]ll written records and documents you have concerning the Detective Examination Oral Board that was administered to me . . . in the years 1992 and 1993." You advise us that the county has made some of the requested information available to the requestor. However, you object to releasing the remaining information, which you have submitted to us for review, and claim that section 552.122 of the Government Code excepts it from required public disclosure.

Section 552.122 excepts from disclosure:

(a) A curriculum objective or test item developed by an educational institution that is funded wholly or in part by state revenue

(b) A test item developed by a licensing agency or governmental body.

Gov't Code § 552.122. The term "test item" in section 552.122 generally includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated. Open Records Decision No. 626 (1994) at 6. An evaluation does not necessarily constitute a test, however, simply because it is labeled as a test, because it is

comprised of questions and answers, or because it involves some sort of scoring system. *Id.* In addition, section 552.122 does not encompass evaluations of an employee's overall job performance or suitability. *Id.* Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.*

You have submitted to us for review two oral examinations and the rating sheets completed during the course of the oral examinations. You advise us that these documents were generated in connection with oral examinations conducted by the Harris County Sheriff's Civil Service Commission and are reused from examination to examination. You object to releasing this information under section 552.122, claiming that its release would "compromise the effectiveness of future promotional examinations." Some of the questions on the submitted oral examinations relate to police investigative procedures and other technical aspects of police work. These questions reveal test items and may be withheld under section 552.122 of the Government Code. The remainder of the submitted information, however, does not reveal test items. For instance, some of the questions on the oral examinations elicit information about the applicant's prior job performance, experience, or suitability. This information does not reveal test items and may not be withheld under section 552.122 of the Government Code. Accordingly, except for the information that we have marked, the requested information must be released in its entirety.¹

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

¹You also claim that section 552.122 excepts from required public disclosure the names of oral examination raters, because release of their names will make them "reluctant to provide unbiased and honest evaluations" and because they were given assurances of confidentiality. A rater's name or comments is not a test item, unless it reveals test items. *See generally* Open Records Decision No. 626. The rater's comments here do not reveal test items. In addition, information is not confidential merely because the person submitting it anticipates or requests that it be kept confidential. *See* Open Records Decision Nos. 479 (1987); 180 (1977).

Ref.: ID# 29047

Enclosures: Marked documents

cc: Mr. Brian D. Leighton
18 Tulip Hill Court
The Woodlands, Texas 77380
(w/o enclosures)